

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 1378 – SB 1669

April 4, 2011

SUMMARY OF AMENDMENT (005329): Deletes the original bill. Requires employers to enroll in the federal E-verify program and verify the work authorization status of all employees hired after January 1, 2012. Requires the Department of Labor and Workforce Development (DLWD) to establish an Office of Employment Verification Assistance to assist employers without internet access to verify employees; authorizes DLWD to hire no more than one person to staff the Office. Prohibits the employment of unauthorized aliens. The penalty for a first violation is a \$1,000 civil penalty for each unauthorized employee; for a second violation, a \$2,500 civil penalty; for a third violation, a \$5,000 civil penalty.

Authorizes the Commissioner of DLWD to issue a warning in lieu of penalties if the employer remedies the violation within 30 days and a determination is made that the violation was unintentional. Requires DLWD to notify employers of alleged violations if there is satisfactory evidence of a violation in a received complaint. Requires employers to provide documentation showing compliance if a notification of violation is received. Requires DLWD to make inquiries into employers' compliance with requirements in conjunction with any pending investigations or inquiries. Requires DLWD to list publicly on its website, a list of employers in violation. Requires proof of E-verify enrollment prior to any private employer receiving economic development incentives. Creates the Lawful Employment Enforcement Fund, to which all penalties collected pursuant to this bill will be deposited, and from which funds will be used to administer the provisions of this bill.

FISCAL IMPACT OF ORIGINAL BILL:

Increase State Revenue – \$5,000/Recurring/Lawful Employment Enforcement Fund

Increase State Expenditures – \$30,700/One-Time/General Fund

\$287,100/Recurring/General Fund

\$5,000/Recurring/Lawful Employment Enforcement Fund

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

Increase State Revenue – Exceeds \$10,000/Recurring/Lawful Employment
Enforcement Fund

Increase State Expenditures – \$6,000/One-Time/General Fund

\$91,100/Recurring/General Fund

\$10,000/Recurring/Lawful Employment
Enforcement Fund

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Assumptions applied to amendment:

- The Commissioner of DLWD is authorized to issue warnings in lieu of penalties if the violation was unintentional or the violation is remedied within 30 days. Most employers will remedy violations to prevent the paying of civil penalties and the suspension or revocation of licenses. The amendment increases the fine for second and third violations and states that a separate penalty will be issued for each employee hired in violation of the bill as amended. The precise amount of revenue generated from civil penalties cannot be determined with available data. However, the increase in recurring state revenue from civil penalties is reasonably estimated to exceed \$10,000. These monies will be deposited to the Lawful Employment Enforcement Fund.
- According to the Department of Revenue, any impact on economic development incentives will be not significant; employers will not risk the loss of funds.
- Any increase in expenditures for state or local government to verify new employees hired after January 1, 2012, will be not significant.
- DLWD will require one staff member to run the Office of Employment Verification Assistance. The recurring increase in state expenditures will be \$52,187 (\$32,910 salary + \$13,017 benefits + \$6,260 supplies, operational). One-time state expenditures for this position will be \$6,000 (office supplies, computer, software, and equipment).
- One additional staff member will be required by DLWD in the Labor Standards Division, to receive complaints and follow up valid complaints with notices of alleged violations, process civil penalties, and receive and analyze documentation proving compliance. A recurring increase in state expenditures of \$48,927 (\$32,910 salary + \$13,017 benefits + \$3,000 supplies and postage).
- The total recurring increase in state expenditures will be \$101,114 (\$52,187 + \$48,927). Monies deposited to the Lawful Employment Enforcement Fund will be utilized to pay a portion of these expenditures; the remaining expenses will require an annual appropriation from the General Fund.
- Directing an agency to use existing resources to perform a new function does not eliminate the fiscal impact of performing the new function since a new function that has a cost will reduce the agency's reversion or will require creation of additional position to perform duties of staff who have been redirected to the new function.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



James W. White, Executive Director

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